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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,125	08/25/2003	Byoung-Woo Cho	1701.1002	9836
21171	7590	02/17/2006	EXAMINER	
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			MORAN, KATHERINE M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 02/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/647,125

**Applicant(s)**

CHO, BYOUNG-WOO

**Examiner**

Katherine Moran

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's amendment of 12/13/05 has been received and reviewed. Applicant amended claims 10, 17, 20, and 21. Claims 1-21 are pending.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 21 recites "formed of **essentially** a stretchable material".

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1, 2, 4-7, 11, 12, 14-16, and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee (U.S. 1,892,515). Lee discloses the invention as claimed. Lee teaches headgear comprising a cap having a crown 11 and visor or sunshield 11b, and a headband attached to the crown and comprising a front part 12 formed of stretchable material and a rear part formed of essentially a non-stretchable material 10. The front part of the headband comprises a bottom edge attached to the crown in tension by stitching 13, with the front part extending circumferentially in the crown along the bottom to edges and beyond edges of the visor. The front part of the headband is stretched and sewn to the crown along a bottom peripheral edge of the crown and a bottom edge of the front part as shown in Figures 2 and 4. The crown is a fixed size in that the crown's size does not change. The method steps of claims 18-20 are inherent in the structure as taught by Lee.

5. Claims 1, 3, 9-11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Park (U.S. 6,052,831). Park discloses the invention as claimed. Park discloses the invention as claimed. Park teaches headgear comprising a cap having a crown 1 and visor or sunshield 2, and a headband attached to the crown and comprising a front part 7 formed of stretchable material and a rear part formed of essentially a non-stretchable material 3. The front part of the headband comprises a bottom edge attached to the crown in tension by stitching as shown in Figure 3, with the front part extending circumferentially in the crown along the bottom to edges and beyond edges of the visor. The front part of the headband is stretched and sewn to the crown along a bottom peripheral edge of the crown and a bottom edge of the front part

as shown in Figure 3. The front part of the headband inclines toward a center of the crown away from a crown side wall.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park '831 in view of Alexander (U.S. 5,613,246). Park discloses the invention substantially as claimed. However, Park doesn't teach an elastic sunshield comprising an extended portion extending inside the headband. Alexander teaches an elastic sunshield 12B with an extended portion 14 extending inside the headband 25. This configuration provides a stable sunshield attachment to the crown. Therefore, it would have been obvious to modify Park's sunshield to provide an extended portion as taught by Alexander, so that the sunshield is prevented from being detached from the crown.

***Response to Arguments***

8. Applicant's Applicant's arguments filed 12/13/05 have been fully considered but they are not persuasive. With regard to Lee, Applicant argues that sheet 12 is not formed of a stretchable material. As Applicant acknowledges, Lee teaches a rubber compound applied to one side of sheet 12. This would certainly lend a stretchable

quality to the sheet. The functional properties of Lee's sweatband as outlined by the Applicant are not relevant to the patentability of the claimed headband, since Lee teaches the claimed headband structure. With regard to Applicant's claim 2 reciting a process of attaching the headband's bottom edge to the crown in tension, it is noted that claim 2 is a product by process claim and as such, is limited by and defined by the process, though determination of patentability is based on the product itself. The structure implied by the process steps should be considered when assessing the patentability of product by process claims over the prior art. However, Applicant has failed to claim structure associated with the attachment "in tension". Thus, the stitched attachment of the bottom edge to the crown is a tensioned attachment.

Applicant argues that Park fails to teach a front part formed of stretchable material and a rear part formed of essentially a non-stretchable material. Park's headband includes a stretchable material 7 that extends along the lower periphery of the headband, including the front and rear headband parts. The headband also includes a non-stretchable material 3 extending along the lower periphery of the crown, including the front and rear headband parts. Thus, Park meets the limitations of independent claim 1. The claim has not defined the specific relationship between the front and rear parts in such a way that would overcome the prior art. Therefore, the claim has been given the broadest reasonable interpretation.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (571) 272-4983. The official and after final fax number for the organization where this application is assigned is (571) 273-8300. General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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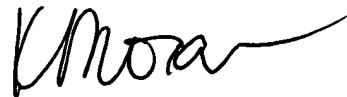
published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

February 8, 2006

A handwritten signature in black ink, appearing to read 'K Moran', with a long horizontal flourish extending to the right.

Katherine Moran

Primary Examiner, AU 3765